VIRGINIA LAW REGISTER

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Annual Meeting of State Bar Association.

The twenty-sixth annual meeting of the Virginia State Bar Association was held at the Hot Springs of Virginia on August 4th, 5th, and 6th last. These meetings are red letter days in the Virginia lawyer's yearly grind and this one was no exception to the rule. Aside from the delightful social features always attendant upon a gathering of Virginia lawyers with their wives and daughters the program as carried out was of unusual interest and value.

The address of the president, Major Samuel Griffin, of Bedford City, dealt with the work of the association, what it has done and what it ought to do. He urged that the full influence of the body be put behind measures recommended by it, particularly in the matter of the reform of the system of legal procedure.

At the evening session, Loomis C. Williams of Richmond read a paper entitled, "Employer's Liability and Workmen's Compensation Law." Mr. Williams pointed out the defects of the present system, showing it to be unsatisfactory to all parties concerned. He discussed in a very interesting manner the various compensation laws of the states that have so far adopted them.

The association adopted a resolution offered by Mr. Minor requesting the members to bring to the attention of the legislative committee on the revision of the Code such statutes as in his judgment should be repealed or amended, with reasons therefor, and accompanied by a draft of the proposed amending act. This is a duty that the members of the bar owe to themselves and to the state and it is hoped that they will perform it freely and fully.

At the morning session of the second day Professor Charles A. Graves, of the University of Virginia, read a paper entitled,

"The Forged Letter of Gen. Robert E. Lee." This is the letter in which occurs the phrase, "Duty then is the sublimest word in our language," and which purported to be written by General Lee to his son, G. W. Custis Lee. Professor Graves marshalled his facts so strongly as to convince his audience that the letter was not genuine.

At the evening session Samuel J. Graham, Assistant Attorney-General of the United States, made a short address on the subject of "The Establishment of Justice," in which he outlined the growth of the Department of Justice from its creation by the first congress to the present time.

The annual address was delivered by Mr. Charles E. Littlefield, of the New York bar, formerly a member of congress from Maine, and well known to Virginia lawyers as the master who presided at the hearings in the West Virginia debt controversy. Mr. Littlefield's address was entitled, "Panama Canal Tolls." His attitude was one of opposition to the repeal of the exemption of tolls in favor of American coastwise shipping. He maintained that the Hay-Pauncefort treaty presented no ambiguity, and when construed as a whole, without the intervention or assistance of the Clayton-Bulwer treaty, the right of the United States to exempt its own coastwise shipping from the payment of tolls was clear and incontrovertible.

The following were unanimously elected officers of the association for the ensuing year: President, Judge Leigh R. Watts, of Portsmouth; vice-presidents, R. C. Blackford, Lynchburg; H. W. Kern, Winchester; R. L. Pennington, Jonesville; Bernard Mann, Petersburg; S. O. Bland, Newport News; members of the executive committee, M. M. McGuire and Lewis C. Williams, Richmond; secretary and treasurer, John B. Minor, Richmond.

115th Virginia.

Through the courtesy of the Michie Company, who have the Virginia Reports on sale, we are furnished Volume 115. There are 114 cases reported, of which 107 are civil, seven criminal. Sixty-three cases are affirmed, forty cases reversed—one in part; two writs of error are refused, appeal dismissed in one and pro-

hibition awarded in the other. Of the seven criminal cases two are affirmed and four reversed and one writ is refused. We believe without a single exception every case in this volume has been annotated or reported in the REGISTER, so it is hardly necessary to say more than the fact that this volume shows the usual amount of important cases.

One thing that probably strikes the lawyer in examining this volume is the practical unanimity of the Court in all cases. There is not a single dissent in any case.

An Appeal to the Public Printer.

We note that the numbering of Volume 115 is, as is the case with all the other volumes, stamped in black ink on the back of the volume. Our experience with this sort of stamping is that in ten years the numbering of the volume becomes almost illegible and we have been compelled to renumber Volumes 75 to 100, in order to be able to distinguish one volume from another. The State of New York numbers its reports with a large triangular red lable in which the number is stamped in gilt. This is not only practically permanent, but renders the volumes easy to be found and distinguished. We would respectfully suggest that this plan be adopted in the future numbering of our Virginia Reports.

Judge McDowell's Rules.

Judge Henry Clay McDowell of the United States District Court for the Western District of Virginia has lately addressed to each member of his Bar a circular letter containing rules intended as far as practical to shorten the time consumed in holding jury trials. These rules are of so much importance and in our humble judgment are so excellent in their nature that we have determined to give them prominence in our editorial columns with some comment thereon. These rules are as follows:

(1) Greater punctuality on the part of counsel in reaching the court room at the convening hours is necessary. It is rare that a juror or witness is late and it is a frequent oc-

currence that the court has to wait on counsel. The delays thus caused are severally not great, but the aggregate of such delays is often a matter of considerable moment.

(2) Counsel are urgently requested not to ask to be excused to answer telephone calls. As a rule such requests must be refused. In the vast majority of instances the call is not urgent and there is no reason why the convenience of some individual at the long distance telephone should be allowed to delay the great number of people usually concerned in a jury trial, or waiting for the conclusion of such trial.

(3) On objections to evidence a mere statement of the point, in the briefest form, is usually as effective as or more effective than an argument. Hereafter argument of objections to evidence will not be permitted, except at the request of the court.

(4) Quite recently two of the Circuit Judges of this circuit have indicated a belief that my practice could be improved by reducing the length of examinations and cross-examinations of witnesses. This is a difficult matter to control, but an effort will be made to meet the views of the Circuit Judges as far as may be practicable.

(5) Only one counsel on a side will be allowed to question any one witness. Suggestions may of course be made by the associates of the examiner, but only to the examiner.

(6) After the re-direct examination of a witness is concluded, opposing counsel are under no circumstances authorized to put even a single further question to the witness. Counsel may, however, always addressing the court, state that some point has been overlooked, or suggest that new matter (stating what it is) has been brought out on the re-direct examination. In either event permission will be given for further examination, but only on the forgotten point or on the new matter.

(7) As a rule defendant's counsel will not be permitted to examine a plaintiff's witness touching affirmative matter of defense during the cross-examination of such witness. Such matter should regularly be introduced after plaintiff has closed, by putting the witness on as the defendant's witness.

(8) The time for arguments before the jury will always be limited, and hereafter the time will be made as short as is consistent with a fair presentation of the case.

(9) Counsel are earnestly requested to offer instructions covering only the chief questions of law involved. In every case much of the law involved need not be covered by special instructions, but much time is consumed in preparing and settling the exact phraseology of unnecessary instructions.

(10) Statements of objections to instructions will be made only on invitation of the court. As a rule the instructions will be settled without the assistance of counsel.

(11) Duplication of instructions is specially to be avoided. The same point is frequently presented in more than one way, and it is urged on counsel that they present a single proposition as far as possible in only one form.

(12) Exceptions must always be distinctly and audibly taken. Under no circumstances will exceptions be "understood" as having been taken, if not audibly taken at the time of the ruling. However, where the same ground of objection applies to many questions, counsel may, I think, safely avoid the necessity of frequent objections and exceptions on the same point, by saving the exception the first time and then announcing that no waiver is intended by failure to make further objection on the same point to further questions—the failure to object being merely due to a desire to avoid unnecessary waste of time.

(13) Counsel are advised to agree upon taking depositions in chancery causes, rather than to insist upon the right to have witnesses testify orally in court. Equity Rule 46 can be waived by consent of parties and the permission of the court. Rule 47 applies only where one party, without consent of the other, desires to take the depositions of witnesses residing within the district or out of the district and not over 100 miles from the place of trial. Rule 46 is admirable as applied to the federal courts in the large cities, but most ill adapted to a district where many terms are held at many different places. As will be explained hereinafter, causes can not be set for certain days, and, as equity causes can be heard only after all jury causes are concluded, the inconvenience to counsel, parties and witnesses involved in oral hearings makes a strict observance of Rule 46 impracticable.

(14) Shortly in advance of nearly every term of court I have requests from counsel that some case be set for trial on some particular day. In every clerk's office there is posted a circular letter from me explaining why such requests

must be refused. In lieu thereof the deputy clerks are directed to estimate as closely as may be (underestimating rather than overestimating) the time probably to be required for the criminal causes, and to summon witnesses in all civil causes for the day next succeeding the probable end of the criminal trials. The reason for this rule is that a hiatus in the trials must be avoided, and no one can make even a fair guess at the length of time likely to be consumed by any particular case. I recognize the fact that this rule does occasionally inconvenience some counsel, parties and witnesses. But the practice of attempting to set cases for particular days, which was for some years frequently tried, practically always involves many more people in greater inconvenience, delay and expense. Counsel are requested to make no such requests; but if made they must be invariably refused.

We call particular attention to the rules which we have had printed in full space.

Rules No. 3 and 4, if properly carried out, would save more valuable time to courts than almost anything we know. The time consumed by counsel in arguing points of evidence with which the judge ought to be presumed to be perfectly familiar, is simply monstrous. One who has ever attended a trial in an English court is struck more than anything else with the absolute absence of objections and arguments on points of evidence. The English Judge is always a learned lawyer. He is also keenly observant of the examination and the testimony of a witness on the stand. It is he who generally checks improper questions and attempts to have improper evidence admitted. Counsel sometimes address "My Lud" with an objection, but the objection is generally met rather curtly by the judge's saying, "I will take care of that point, Brother So-and-So." We have known in our practice half a day to be consumed in an argument upon the admission or non-admission of certain testimony, vast numbers of volumes to be produced and read from and at the conclusion of the argument the evidence turn out to amount to nothing. We believe that if the judges would get up the law of evidence as thoroughly as the English judges, and then permit no argument on questions of evidence unless they were in grave doubt, the time consumed in jury trials would be less by one-half than it is now.

It is equally true that a great amount of time is wasted in useless cross-examination. Cross-examination itself is one of the most dangerous weapons and often proves a very boomerang. If lawyers could only be induced to confine their cross-examination within proper bounds a great deal of time also could be saved.

Rule No. 6 should be strictly enforced, because in the lax methods in our State in the examination of witnesses much time is wasted by not adhering to regular fixed rules.

Rule No. 7 should also be strictly enforced and counsel not allowed to use the plaintiff's witness practically as his own during cross-examination.

Rules Nos. 9, 10, and 11 will be found the hardest rules to enforce, except, of course, Rule No. 10, and we believe that half of the trouble of our wretched system of instructions would be cured if the judge took the instructions, examined them after argument and only asked for argument upon those points as to which he had any doubt. Rules 9 and 11 must of course be merely suggestions, but it would be a great thing if Judge McDowell's suggestions should meet with the hearty assent, approval and affirmative action of the Bar of the State.

We most heartily commend these rules to the circuit judges in our own State, except, of course, as to No. 13, which has no application in the State court.

Are Bulbs Crops?

In the case of Pullen-Burry *v.* the Provost of St. Nicholas Lansing College, etc., decided in the English court on May 14th last, a very interesting question was settled. Some gardeners leased a farm in 1892 for a term of twenty-one years, which expired on September 29th, 1913. The subject of the lease was the Malt House Farm at Lancing, comprising upwards of 40 acres, the rent reserved being 150*l.* a year for the first three years and 200*l.* a year for the remainder of the term. The tenants, who were described in the lease as "market gardeners," covenanted, *inter alia,* that they would "plant at least nine-tenths of the land with standard fruit trees properly grafted at the average rate of 320 trees to each acre—and would keep all the

lands demised well manured, clean and in good heart and condition." The landlords covenanted that "at the end of the term they would pay the tenants according to a valuation—in the usual manner—for all the standard fruit trees then growing on the said premises, and for all bush fruit trees, and other crops then growing on the said premises." The dispute turned upon the true meaning of the words "other crops" in the covenant. The tenants duly performed their covenant to plant the required number of fruit trees, but they also planted many millions of bulbs. It was in respect of these that they claimed compensation to the amount of over 8,000*l*. The question put to the Court was whether or not bulbs, rhubarb, and peonies were included in the words of the lease, "other crops then growing on the said premises." During the argument the issue was limited to the simple question whether bulbs could be "crops" within the meaning of the covenant, the rhubarb and the peonies being either conceded, or treated as not worth disputing about. There was no judicial authority on that interesting point, though it came in fact before a Divisional Court in 1896, when the Judges (Lawrence and Collins, JJ.) expressed relief at being able to decide the case on another point (Cooper *v.* Pearse, 65 L. J., M. C. 95). For the landlords it was contended before him that in that covenant the word "crops" must be given a limited meaning, following as it did the mention of a specific genus, "fruit trees," and that when so limited it must be confined either to crops of a similar genus to fruit trees or at least to crops borne by food-producing plants. It was urged that bulbs could not have been in the contemplation of the parties in 1892, as bulbs had only recently become objects of cultivation for profit in this country. But even if that fact could be proved, the answer was that the covenant expressly provided for compensation for crops growing, not at the date of the execution, but at the date of the termination of the lease. It could not have been intended that nothing which was not known or treated as a crop in 1892 should be known or treated as a crop in 1913.

His Honor in deciding the case stated that he could not agree that the rule of construction known to lawyers as the *ejusdem generis* rule could be applied in this case, as contended for by the landlords. He thought the more general rule was applica-

ble to this covenant—viz, that when language comprehensive in its descriptive character followed the enumeration of specific objects or classes, the comprehensive language must be given its extended and natural meaning, subject to the scope and intent of the whole instrument. Here they had to do with the lease of a farm to market gardeners, mainly it was true, for fruit growing, but quite clearly for such other purposes also as a market gardener might fairly require. A market gardener was a man who utilized his garden for trading or market purposes. A garden was a place where at least anything coming under the head of fruit, vegetables, or flowers might naturally be grown. But if the limited construction of the words "other crops" contended for were correct the tenants would be debarred from cultivating certainly flowers, and perhaps vegetables and cereals also, not to mention such things as tobacco and flax. That could never have been the intention of the parties to a lease of this description, and would be an unreasonable construction. For himself he could not doubt that what they meant was such other crops in addition to fruit trees as were natural and proper to the business of a market gardener. If so, flowers must certainly be included. Then, could there be any doubt that bulbs came under the head of flowers? The court did not need expert knowledge to be aware that from bulbs came such well-known and marketable flowers as snowdrops, crocuses, jonquils, daffodils, narcissi, hyacinths, irises, tulips, and gladioli, and that there were also bulbous-rooted food-producing plants, such as onions, shallots, garlick and leek. The definition of a bulb in Webster's International Dictionary was "any bulbous plant or flower," which would include all the flowers and vegetables he had mentioned. And they clearly came within some of the definitions of the word "crop" given by authoritative dictionaries—*e. g.*, "the produce of the land either while growing or when gathered" (Murray), and "corn and other cultivated plants grown and garnered"—"the produce of the ground" (Century). A further point was argued before him on behalf of the landlords, that, even if bulbs were crops, only the blooms and not the bulbs themselves could be the subject of compensation under that covenant. He referred to the Board of Agriculture circular, which was issued in 1909 and revised in 1913. It was intended to encourage

the cultivation of bulbs in this country. On page 2 occurred the sentence "good bulbs, like other crops, cannot be grown on poor soil." At a later page the word "crop" was applied to the blooms; from which he concluded that the word was used by experts sometimes for the bulbs and sometimes for the blooms. If that were so, the tenants might claim, as against the covenanters, the wider use of the word which made in their favor. And it must be observed that the covenant bound the landlords expressly to pay for the fruit trees and not merely the fruit. Thus it would seem by analogy that they must pay for the bulbs, and not merely for the blooms. However that might be, he thought that bulbs, rhubarb and peonies were included in the words of the lease "other crops then growing on the said premises."

Service of Process on the Agent of a Foreign Corporation.

Section 3225 of the Code of Virginia provides that service against such a corporation may be had on any agent of the corporation against which the case is (unless it be a case against a bank), or on any person declared by the laws of this State to be an agent of such a corporation. An interesting question arises as to where an agent has been appointed by a foreign corporation and has subsequently resigned or been removed and no new agent has been appointed and the public not notified of the change in the agency and service is made upon the former agent—would it be good service against the corporation?

In a recent case in Kentucky (S. B. Reese Lumber Co. *v.* Licking Coal & Lumber Co., 161 S. W. 1124), the former company was sued by the latter to recover a sum of money alleged to be due for timber sold and delivered. Service was made on the Reese company by delivering a copy of the summons to one Cook who was shown by the records in the office of the Secretary of State to have been appointed agent for service of process in any suit which might be brought against the company in the state of Kentucky. But at the time the summons was served Cook was no longer connected with the company and failed to notify it of the service. Consequently it did not appear to defend the suit, judgment was rendered against it and

its property was about to be sold to satisfy the judgment before the company became aware of the state of affairs. The Reese company then commenced an action to have the judgment set aside, contending that the money was not due and owing from it and that by "unavoidable casualty or misfortune" it had been prevented from appearing and making defense to the action. The Court of Appeals of Kentucky held, however, that since the company had by instrument filed in the office of the Secretary of State duly appointed Cook as its agent and had not filed any statement showing a change of agent, Cook was still the proper party on whom to serve process. Both the company and its agent, Cook, according to their own showing had been guilty of negligence; the former in failing to advise the public through the filing of the necessary written statement with the Secretary of State that Cook was not its agent or the proper person on whom to serve process, and the latter in failing to notify the company of the service of summons upon him. Failure to appear and defend the former action being due to the negligence of the company and its agent the request for a new trial was refused.

Mrs. Enoch Arden in the Law.

While the reported cases of returning husband and wife and vice versa have often appeared in real life, it is very seldom that they ever get into the law courts. In the case of Galloway *v.* Galloway, etc., in England on last May a rather curious case came before Justices Ridley and Bray, who might have been tempted to make very bad law on account of the hardship of the case. They did not do so, however, and we think very properly decided the case in the right way.

The defendant Galloway married in 1898 a wife who left him in 1903. He made inquiries about her in 1907 and came to the conclusion that she was dead and thereupon he entered into a second marriage. Five or six years seemed to be the limit of Galloway's matrimonial felicity, for in 1913 he and his wife separated and a separation deed by mutual consent was entered into by which Galloway agreed to pay his second wife a certain sum of money annually. He had hardly made this contract be-

fore his wife turned up on the scene and demanded that she be taken back and supported. Thereupon the unfortunate Galloway informed wife Number Two that he could only pay her one-half of the amount which he agreed to pay under the separation deed. Wife Number Two sued for arrears and Galloway in reply asked that the contract might be rescinded on the ground that it was executed under a mutual mistake of fact. The county court declined to entertain this plea, but the divisional court held that the deed, having been entered into under a mutual mistake of fact—that is, the true relations of the parties—was null and void, and decreed accordingly. We think that there can be no question about the propriety of this decree, but the case, to say the least of it, is a singular one.

Appeal for Funds to Preserve the Oldest Courthouse in the United States.

This colonial courthouse is located at Eastville, the county seat of Northampton County, Virginia. Not long ago the County Supervisors ordered it to be torn down, but after persistent appeals by the ladies of Debedeavon Branch, A. P. V. A., they consented to turn it over to the ladies of the association, if they would remove it. They have had it removed, but it must be restored. The restoration includes closing in the front of the building (which has been used as a store), adjusting the doors and windows, repairing the jury loft, judge's bench, railing, stairs, replastering walls, restoring porch, etc., all of which will cost about $1,400. This old courthouse is a beautiful specimen of colonial architecture, built of brick laid up in Flemish Bond. This is not the first courthouse, but it is claimed to be the oldest in the United States, having been built in 1680. As such it will appeal particularly to the interest of the legal fraternity. In J. C. Wise's "Early History of the Eastern Shore of Virginia" he says that the courthouse cost 7,127 pounds of tobacco, and was erected on the land of Col. Wm. Kendall, who gave 300 pounds of tobacco toward the expense of the building. The specifications required it to be 18x25 feet with chimney on the outside. Over a century ago it was leased to a Mr. Nottingham for a dollar a year, on condition that he would put a

new roof on it, and the lease was to hold as long as the roof lasted, and the rent was paid. So Mr. Nottingham soaked the shingles in linseed oil to prolong the lease. The building remained in possession of the Nottingham heirs until last year, when the county bought back the property for $4,000. The supervisors were about to demolish the building, when the ladies came to the rescue. These ladies have already repaired the old debtor's prison, and clerk's office, built in 1719. Anyone desiring to contribute, will please send contributions to Mrs. William Bullitt Fitzhugh, Directress, Debedeavon Branch, A. P. V. A., Machipongo, Va.

We most heartily commend this appeal to our readers. Virginians are the most careless of any civilized people in the world in taking care of the treasures bequeathed to them by their forefathers. We trust this laudable attempt on the part of these patriotic ladies will meet with a prompt and liberal response.